



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/170685

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on January 07, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for Institutional MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 16, 2015, the Petitioner applied for Institutional MA. Her marital status was reported as "divorced." A request for backdated coverage for three months was submitted with

the application. The application also contained an authorization of representative for [REDACTED], the business office manager at the nursing facility, to represent the Petitioner for purposes of her application.

3. The agency issued an undated letter to the Petitioner's representative requesting verification of the Petitioner's divorce and proof of Petitioner's pension. The requested verification was due to the agency by October 16, 2015. The agency issued another undated letter to the Petitioner's representative extending the due date for verification to October 26, 2015.
4. On October 27, 2015, the agency issued a Notice of Decision to the Petitioner's representative informing her that the application was denied due to lack of verification.
5. On December 10, 2015, the Petitioner's representative filed an appeal on behalf of the Petitioner.

DISCUSSION

Medicaid rules require recipients to verify relevant information, including assets. Wis. Admin. Code, § DHS 102.03(3)(h). Agencies must allow at least 30 days from the date of application, or 10 days from the date of the request, whichever is later, to verify the information. Medicaid Eligibility Handbook (MEH), § 20.7.1.1. see also Wis. Admin. Code § DHS 102.03(1). Verification of assets is mandatory. MEH, § 20.3.1. An individual's marital status is required to determine assets available to that individual.

It is the responsibility of an applicant/recipient to resolve questionable information, but workers must assist those who have "difficulty in obtaining" verification. MEH, § 20.1.4. Workers cannot deny eligibility to those who lack the ability to produce verification. MEH, § 20.5. The handbook provisions are consistent with Wis. Admin. Code, § DHS 102.03(1):

An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so....If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.

The Handbook instructs agency workers how to carry out this regulation:

Begin or continue benefits when:

1. The member provides requested verification within the specified time limits and is otherwise eligible.
2. Requested verification is mandatory, but the member does not have the power to produce the verification and s/he is otherwise eligible.

MEH, § 20.8.1.

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility

MEH, § 20.8.3.

The IM worker must use all available data exchanges to verify information rather than requiring the applicant to provide it. Use the best information available to process the

application or change within the time limit and issue benefits when the following two conditions exist:

1. The applicant/member does not have the power to produce verification, and
2. Information is not obtainable timely even with your assistance.

Do not deny eligibility in this situation, but continue in your attempts to obtain verification. When you have received the verification, you may need to adjust or recover benefits based on the new information. Explain this to the applicant/member when requesting verification.

MEH, § 20.1.4.

In this case, it is undisputed that the Petitioner is unable to provide reliable information regarding her marital status and her assets. Both the nursing facility and the agency have used various methods to obtain information from the Petitioner and have used available state agencies and other sources to attempt to verify her marital status. Petitioner has stated that she was married at one time to '██████' and that they were divorced in ██████. No records of a divorce can be found. Petitioner's family (a son and a grand-daughter) has been uncooperative with both the agency and the nursing facility. However, there is also no evidence that she has a husband in her life at this time or as part of her current family.

There was also testimony at the hearing that the Petitioner's granddaughter mentioned that the Petitioner has a financial account with \$100,000. The agency and the nursing facility have attempted to obtain information from the family and various sources about the existence of such account but have not found any information. The Petitioner's family is uncooperative and not providing information to either the nursing facility or the county agency.

The agency argues that the nursing facility is at fault for admitting the Petitioner without first verifying information regarding the Petitioner's marital status and assets. While the nursing facility should have done a better job of obtaining information during the admission process, this argument is ultimately irrelevant as the agency is required by law to process the Petitioner's application based on the best available information it is able to obtain.

I note that, at the time of the hearing, the services of Adult Protective Services and law enforcement for investigation of possible elder financial abuse or neglect by the Petitioner's family had not been sought by either party. This seems to be the logical route if financial abuse or neglect is suspected.

With regard to the Petitioner's MA application, I am remanding this matter to the agency to continue to process the Petitioner's application of September 16, 2015 based on the best information available; specifically, the Petitioner states that she is divorced and there has been no evidence discovered to refute her statement. In addition, with regard to any additional pension or financial accounts referred to by the Petitioner's granddaughter, there is no evidence of any such account so the agency must proceed on the basis that no such account exists. If information about the Petitioner's marital status or financial assets is later verified, the agency has the authority to recover any benefits the Petitioner was not entitled to receive.

CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's application for MA.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to process the Petitioner's MA application of September 16, 2015 based on the information in the application, including the Petitioner's marital status as "divorced" and the assets that were able to be verified. The agency shall issue a new Notice of Decision to the Petitioner when the application is processed. New appeal rights shall be provided to the Petitioner regarding the new determination and the Petitioner or her legal representative may file a new appeal if she does not agree with the agency's new determination. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of March, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 3, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability